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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/051,282
Filing Date: January 22, 2002
Appellant(s): FELKEY ET AL.

Phouphanomketh Dithavong
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 23, 2011 and April 21, 2011 appealing from the Office action mailed September 2, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Decision was rendered by the Board of Patent Appeals and Interferences, on November 24, 2010, in related Application Serial No. 10/051,180, affirming the rejection made by the Examiner; and

Decision was rendered by the Board of Patent Appeals and Interferences, on December 24, 2009, in the present Application, affirming the rejection made by the Examiner.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1, 3, 7-10, 12, 14, 21, 22, 27-30, 32-35, and 37-41 are pending. Claims 37-39 stand withdrawn from consideration pursuant to the provisions of 37 C.F.R. § 1.142(b). Claims 2, 4-6, 11, 15-20, 23-26, 31, and 36 have been canceled. Claims 1, 3, 7-10, 12, 14, 21, 22, 27-30, 32-35, and 40-41 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,085,171	Leonard	4-2000
6,965,868	Bednarek	11-2005
6,098,108	SRIDHAR ET AL.	8-2000
6,788,949	BANSAL	9-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 7-10, 12, 14, 21, 22 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,085,171 to Leonard in view of U.S. Patent No. 6,965,868 to Bednarek.

Regarding claims 1 and 35, Leonard discloses a computer –implemented method, apparatus and computer-readable media storing computer-executable instructions for procuring telecommunications offering remotely comprising: receiving, via the at least one processor, a pre-sale procurement inquiry from a customer application, the pre-sale procurement inquiry specifying a selected telecommunications

offering from a plurality of offerings including voice service, data access service and mobile telecommunications offerings (col. 4, lines 1-9; col. 3, lines 37-56; col. 4, lines 49-54; Figure 10; col. 13, lines 25-26; col. 3, lines 57-60), the pre-sale procurement inquiry being directed at least to one or more telecommunication services to which a customer who is not yet a subscriber is considering a subscription (col. 3, lines 57-63); generating procurement data in response to the pre-sale procurement inquiry (col. 2, lines 4-20; Figure 12; col. 13, lines 32-45; col. 3, lines 57-60); and transmitting the procurement data to the customer application (col. 8, lines 36-41).

However, Leonard does not explicitly disclose providing an option for accessing a network consultant via instant messaging. Leonard discloses a method of ordering a change of communication service (col. 1, lines 46-50). Customers communicate and/or receive voice, video, and/or data signals from communication devices. Communication devices can be cellular telephones, computers, Internet appliances, personal digital assistants or any other devices for communicating and/or receiving voice, video, and/or data signals. (Col. 3, lines 46-56)

Bednarek, on the other hand, teaches providing an option for accessing a network consultant via instant messaging (col. 10, lines 50-53; col. 11, lines 64-66; col. 14, lines 46-49).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Leonard, to include providing an option for accessing a network consultant via instant messaging, as taught by Bednarck, in order to engage in real time dialogue (Bednarek, col. 11, lines 64-65) and

provide intensive interaction and customized information with the customer (Bednarek, col. 14, lines 48-49).

Regarding claims 3, 7, 8-10, Leonard discloses the procurement data of pre-sale, ordering and post-sale data (col. 3, lines 57-63; col. 12, lines 23-44; col. 12, line 66 - col. 13, line 24); transmitting the pre-sale data comprising value added content which includes at least one of data for matching the selected telecommunication offering with needs of a customer, data for qualifying a customer for the selected telecommunication offering, data for an on-line demonstration of a process for procuring the selected telecommunication offering, data for answers to technical questions (col. 3, lines 57-63; col. 12, lines 23-44; col. 12, line 66 - col. 13, line 24); transmitting post-sale data comprising value added content, the value added content including at least one of data for providing access to exiting orders, data for providing electronic billing, data for sending of a page, data for scheduling of a conference call, data for on-line directory assistance, or tailored data for on one of a telecommunication ordered or a related telecommunication offerings (col. 3, lines 57-63; col. 12, lines 23-44; col. 12, line 66 - col. 13, line 24); providing the voice service offering to include calling package, a long distance, a toll free, a conferencing and a calling card telecommunication offering (col. 4, lines 49-54; col. 12, line 66 - col. 13, line 24); providing the data access service (col. 4, lines 49-54; col. 12, line 66 - col. 13, line 24); providing the mobile telecommunication offerings (col. 3, lines 37-43; col. 4, lines 49-54; col. 12, line 66 - col. 13, line 24); and graphical user interface (Figures 6-11; col. 10, lines 37-39).

Regarding claims 12 and 14, Leonard discloses a computer-implemented method, apparatus and a computer-readable media storing computer-executable instructions for servicing telecommunication offerings remotely comprising: receiving an pre-sale inquiry from a customer application, the pre-sale inquiry specifying search criteria with respect to an order for one of a plurality of telecommunication offering including voice service, data access service and mobile telecommunication service (col. 10, lines 4-36), the pre-sale inquiry being directed at least to one or more telecommunication services to which a customer who is not yet a subscriber is considering a subscription (col. 3, lines 57-60), a customer agent assigned for servicing telecommunication offering order, (col. 8, lines 23-49); generating response to the service inquiry and pertaining to the search criteria (col. 2, lines 4-20; Figure 12; col. 13, lines 32-45); and transmitting the response data to the customer application (col. 8, lines 36-41).

However, Leonard does not explicitly disclose instant messaging. Leonard discloses a method of ordering a change of communication service (col. 1, lines 46-50). Customers communicate and/or receive voice, video, and/or data signals form communication devices. Communication devices can be cellular telephones, computers, Internet appliances, personal digital assistants or any other devices for communicating and/or receiving voice, video, and/or data signals. (Col. 3, lines 46-56)

Bednarek, on the other hand, teaches instant messaging (col. 10, lines 50-53; col. 11, lines 64-66; col. 14, lines 46-49).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Leonard, to include instant messaging, as taught by Bednarek, in order to engage in real time dialogue (Bednarek, col. 11, lines 64-65) and provide intensive interaction and customized information with the customer (Bednarek, col. 14, lines 48-49).

Regarding claims 21-22, Leonard discloses a computer-implemented method and computer-readable media storing computer-executable instructions for procuring telecommunications offering remotely comprising: submitting a pre-sale inquiry, specifying a selected telecommunications offering among a voice, data access and mobile telecommunications offerings (col. 4, lines 1-9; col. 3, lines 37-56; col. 4, lines 49-54; Figure 10; col. 13, lines 25-26), the pre-sale inquiry being directed at least to one or more telecommunication services to which a customer who is not yet a subscriber is considering a subscription (col. 3, lines 57-63); receiving procurement data (col. 2, lines 4-20; Figure 12; col. 13, lines 32-45) wherein the procurement data is generated in response to the and pertains to he selected telecommunication offering (col. 2, lines 4-20; Figure 12; col. 13, lines 32-45). Furthermore, Leonard discloses a graphical user interface (Figures 6-11).

However, Leonard does not explicitly disclose instant messaging. Leonard discloses a method of ordering a change of communication service (col. 1, lines 46-50). Customers communicate and/or receive voice, video, and/or data signals form communication devices. Communication devices can be cellular telephones,

computers, Internet appliances, personal digital assistants or any other devices for communicating and/or receiving voice, video, and/or data signals. (Col. 3, lines 46-56)

Bednarek, on the other hand, teaches instant messaging (col. 10, lines 50-53; col. 11, lines 64-66; col. 14, lines 46-49).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Leonard, to include instant messaging, as taught by Bednarek, in order to engage in real time dialogue (Bednarek, col. 11, lines 64-65) and provide intensive interaction and customized information with the customer (Bednarek, col. 14, lines 48-49).

Claims 27-30 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,085,171 to Leonard in view of U.S. Patent No. 6,965,868 to Bednarek and further in view of U.S. Patent No. 6,098,108 to Sridhar et al. Leonard substantially disclose the claimed invention, however, Leonard does not disclose instant messaging; and a customer browser loaded on a customer client computer; a back office browser loaded on a back office client computer; the server program communicate according to a communication protocol architecture that includes a web layer and application layer; a database layer; a site intelligence server; and the development, staging and production system. Leonard discloses a method of ordering a change of communication service (col. 1, lines 46-50). Customers communicate and/or receive voice, video, and/or data signals form communication devices. Communication devices can be cellular telephones, computers, Internet appliances,

personal digital assistants or any other devices for communicating and/or receiving voice, video, and/or data signals. (Col. 3, lines 46-56)

Bednarek, on the other hand, teaches instant messaging (col. 10, lines 50-53; col. 11, lines 64-66; col. 14, lines 46-49).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Leonard, to include instant messaging, as taught by Bednarek, in order to engage in real time dialogue (Bednarek, col. 11, lines 64-65) and provide intensive interaction and customized information with the customer (Bednarek, col. 14, lines 48-49).

Furthermore, Leonard and Bednarek do not disclose a customer browser loaded on a customer client computer; a back office browser loaded on a back office client computer; the server program communicate according to a communication protocol architecture that includes a web layer and application layer; a database layer; a site intelligence server; and the development, staging and production system.

Sridhar, on the other hand, teaches a customer browser loaded on a customer client computer; a back office browser loaded on a back office client computer; the server program communicate according to a communication protocol architecture that includes a web layer and application layer; a database layer; and a site intelligence server (Figure 6; Figure 9; Figure 15; Figure 22; col. 5, lines 7-25; col. 9, lines 44-58).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the system of Leonard and Bednarek, to include a customer browser loaded on a customer client computer; a back office

browser loaded on a back office client computer; the server program communicate according to a communication protocol architecture that includes a web layer and application layer; a database layer; a site intelligence server; and the development, staging and production system, as taught by Sridhar, in order to provide enhanced communication between client and server computers coupled through the Internet (Sridhar, col. 1, lines 13-15).

Claims 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,085,171 to Leonard et al. in view of U.S. Patent No. 6,788,949 to Bansal.

Leonard discloses a method comprising: providing a plurality of options to communicate with a consultant during provisioning (col. 1, line 1; Figure 5; col. 3, lines 47-56), the provisioning including at least a pre-sale inquiry being directed at least to one or more telecommunication services to which a customer who is not yet a subscriber is considering a subscription (col. 3, lines 57-63); receiving input from the customer application, the input specifying one or more selections of a plurality of telecommunications products (Figure 10); determining whether the selection is valid during the provisioning (Figure 12; Figure 13A); and generating an order for the selection based on the determining step (Figure 12; Figure 13A).

However, Leonard does not explicitly disclose instant messaging and on-line shared white-boarding; and web interface. Leonard discloses a method of ordering a change of communication service (col. 1, lines 46-50). Customers communicate and/or receive voice, video, and/or data signals from communication devices. Communication

devices can be cellular telephones, computers, Internet appliances, personal digital assistants or any other devices for communicating and/or receiving voice, video, and/or data signals. (Col. 3, lines 46-56) Clients 10 couple to client server 90 using links 20, network 30, and link 40. Network 30 could be the Internet, a wide area network (WAN), a private or public switched or dedicated network, or any other type of communication network for transferring data. (Col. 3, lines 9-13)

Bansal, on the other hand, teaches instant messaging and on-line shared white-boarding, and web interface (col. 1, lines 30-41).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Leonard, to include instant messaging and on-line shared white-boarding and web base interface, as taught by Bansal, in order to provide a chat session that allows to enter and send messages simultaneously (Bansal, col. 1, lines 22-24).

(10) Response to Argument

A. Claims 1, 3, 7-10, 12, 14, 21, 22 and 35 are not rendered obvious by Leonard and Bednarek because neither reference teaches or suggests the combination of a pre-sale procurement inquiry from one who is not yet a subscriber, and the provision of an option to access an online consultant via consultant via instant messaging.

Appellants remark that "in Leonard, there is not disclosure or suggestion of a prospective subscriber, or one who is not yet a subscriber, making a pre-sale

procurement inquiry as to what offerings are available". (Argument section, page 15, first paragraph)

Examiner does not agree. As noted in the Advisory Action dated November 29, 2010 and Final Office Action dated September 2, 2010, Leonard discloses a system for processing an order to change communication service (abstract). Leonard discloses the receiving of an order when a customer desires to change communication service. A change in communication service contemplates changing a service provider. (Col. 3, lines 57-60) Examiner notes that each service provider has its own calling plans and services, so when a customer decides to change service provider they are also changing their communication services and calling plans. When he or she changes communication service such as changing a service provider, that customer is an interested new subscriber or prospective subscriber. For example, a customer who subscribes to AT&T (service provider), wherein AT&T has its own services or calling plans, wants to change to a new service provider such as Verizon with its own set of services and plans, this person is processing an order to change to a different service provider which makes this person a prospective subscriber who is interested or inquiring about the Verizon plans and services.

Such system for processing an order to change communication service, wherein the change includes changing a service provider is considered "a prospective subscriber or one who is not yet a subscriber, making a pre-sale procurement inquiry as to what offerings are available".

Appellants remark that "neither Bednarek nor Leonard provides for an option to access a network consultant via instant messaging". (Argument section, page 17, first bridging)

Examiner does not agree. As noted in the Final Office action dated September 2, 2010, the combination of Bednarek and Leonard teach or suggest "an option to access a network consultant via instant messaging". Leonard discloses a method of ordering a change of communication service (col. 1, lines 46-50). Order entry system includes clients coupled to a server. Server includes a client server coupled to a host server. Client server communicates with client to verify and receive numerous orders. (Col. 2, line 67 - col. 3, line 4) Client server couples to host server using link and host server couples to communication service providers (CSPs). CSPs represent any arrangement of hardware and/or software equipment operated by local exchange carriers, independent local exchange carriers, interexchange carriers, data service providers, cable television service providers, or any other entity that provides voice, video, and/or data services to customers. (Col. 3, lines 16-23) CSPs include a gateway coupled to central offices, mobile telephone switching files (MTSOs), cable head ends, remote terminals, local switches, or other communication equipment (referred to generally as switches) servicing communication devices of customers. Gateway and switches communicate using links. Each switch includes a database that contains a variety of information about customers coupled to each switch. Customers communicate and/or receive voice, video, and/or data signals from communication devices using twisted pair wire, coaxial cable, fiber optic cable, wireless links, or any

other wireline or wireless link (generally referred to as links). Accordingly, communication devices may be landline or cellular telephones, computers, television converter boxes, Internet appliances, personal digital assistants (PDAs), or any other device for communicating and/or receiving voice, video, and/or data signals. (Col. 3, lines 37-56)

The Examiner then turns to Bednarek to teach the "an option for accessing a network consultant via instant messaging". Bednarek teaches the system operator operates a website or "virtual retail store," i.e., vetail store. The store may comprise, for example, a website which has a plurality of departments relating to different types of goods. Within each class of goods, the vetailer selects one or more merchants whose products will be displayed on the website. The vendors preferably have agreed to pay some form of commission to the vetailer for sales through the site. For each of the various classes of goods or services offered on the site, there is preferably one or more certified sales agents. The sales agents are certified as having a prescribed level of expertise concerning the specific product for which they are certified. Eventually, any one particular sales agent may have expertise with regard to a variety of types of products. The certification of expertise may be made by the vendor or by the system operator, but in any case, the system maintains an association of the identity of the sales agent along with the areas of expertise for that particular sales agent. Once certified, the sales agent is provided access to additional information concerning the products, which may be shared with consumers in the manner described hereinafter. This additional information is preferably in the form of video, graphic or other sensory

images of the products or information about the products. (Col. 10, lines 64-col. 11, lines 20) The "virtual retail" or "vetail" uses networked computers, instant messaging technology, wireless connectivity and a distributed sales agent model (col. 10, lines 50-53). Bednarek teaches the display preferably includes some portion for displaying the dialogue between the sales agent and the customer. Naturally, the dialogue could occur purely through voice communication, but preferably some form of video, either text based or video conferencing, is provided. Finally, in connection with each department or class of goods, the system displays the sales agents that are currently available. This is done using the same technology as currently used in connection with "buddy list" or other related technology for determining the presence of a particular person or agent on the Internet. (Col. 11, lines 31-45). A customer can enter the vetail website and select either their sales agent or the first available sales agent. A customer and sales agent then engage in real time dialogue either through video conferencing, instant messaging or voice over the Internet. (Col. 11, lines 59-66) Furthermore, the shopping agent or retail assistant corresponds through a global network using voice, video or instant messaging (col. 13, lines 59-62).

Such virtual retail or vetail using instant messaging technology; displaying sales agents in each department or class of goods that are currently available by using a buddy list or other related technology for determining the presence of a particular person or agent on the Internet; customer and sales agent engaging in real time dialogue either through video conferencing, instant messaging or voice over the Internet; and shopping agent or retail assistant that corresponds through a global

network using voice, video or instant messaging are considered "an option to access a network consultant via instant messaging".

Examiner further notes with respect to KSR rational (f), that the marketplace reflects the reality that applying modern electronic communication to older electronic commerce system is commonplace. Therefore, it would have been obvious to one of ordinary skill in the art of electronic commerce to update the older electronic commerce system such as shown in Leonard with modern electronic communication component that are commonly available and understood in the art as shown in Bednarek, in order to gain the commonly understood benefits of such adaptation, such as the ability to be more interactive and responsive to customers in an instantaneous and reliable way thus increasing efficiency. The combination is thus the adaptation of an old idea or invention, using newer technology that is commonly available and understood in the art. Leapfrog, 485 F.3d at 1163.

Moreover, the prior reference is considered analogous because it is "in the same field of endeavor as the invention". *Innovation Toys v. MGA Entertainment and Wal-Mart* (Fed. Cir. 2011)

B. Claims 27-30 and 32-34 are not rendered obvious by Leonard and Bednarek in view of Sridhar et al. because Sridhar et al. does not cure the deficiencies of Leonard and Bednarek and does not suggest the specific elements of claim 27.

Appellants remark "thus, except for a resort to impermissible hindsight, employing Appellants' disclosure and claims as a guide, there would have been no reason for the person of ordinary skill in the art to take anything from Sridhar et al. and apply it to the combination of Leonard and Bednarek to result in the claimed invention, wherein a back office browser loaded on a back office client computer is **configured to submit a service inquiry specifying a search criteria with respect to an order** for a telecommunications offering, and a **server program** loaded on a server computer is configured to perform three functions, i.e., 1. receive the procurement and service inquiries, 2. **generate procurement data** pertaining the to the selected telecommunications offering and service data pertaining to the search criteria, and 3. **transmit the procurement and service data**. There is no indication, or suggestion, in Sridhar et al., or in either Leonard or Bednarek, for that matter, of a server program for performing the claimed three functions." (Argument section, pages 19-20, first paragraph)

In response to Appellants' argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Furthermore, the combination of Leonard, Bednarek and Sridhar teaches or suggest the recitation above. The combination of Leonard and Bednarek, specifically, Leonard teaches or suggests "configured to submit a service inquiry specifying a search criteria with respect to an order for a telecommunication offering; receive the procurement and service inquiries; generate procurement data pertaining to the selected telecommunication offering and service data pertaining to the search criteria; and transmit the procurement and service data". Leonard teaches an order to change communication service that includes receiving order data; communicating the order data; and generating a service request using the order and initiates communication of the service request to a communication service provider of the customer to change communication service (col. 1, lines 58-67). An order entry system is disclosed which includes numerous clients coupled to a server. The server includes a client server coupled of host server. The client server communicates with client to verify and receive order to change communication service. Host server generates a service request based on order and communicates service request to communication service providers (CSP)s to change communication service. (Col. 2, line 67-col. 3, line 9) CPSs include a gateway coupled to central offices, mobile telephone switching files, cable head ends, remote terminals, local switches, or other communication equipment service in communication devices of customers (col. 3, lines 36-41) The client receives order when a customer desired to change communication service. A change in communication service contemplates changing or adding a service provider, changing or adding service offered by an existing service provider, or any other modification to

services that offer the services. Client performs initial verifications on order. Client then communicates order to client server. (Col. 3, lines 57-65) Upon successfully completing the various verifications at client, client server, and third party verifier, order is complete and ready for submission into the provisioning thread (col. 4, lines 25-28). Host sever then retrieves complete order from the client server and determined CSP associated with complete order and formats service request for communication to CSP (Col. 4, lines 35-38). CSP receives service request and routes service request to switch servicing customer. Switch then updates its database to change account or service information of customer that reflects the desired change in communication service. The switch is a central office that updates the pre-subscribed interexchange carrier for customer stored in database. (Col. 4, lines 39-46)

Such order to change communication service that includes receiving order data, communicating the order data, and generating a service request using the order and initiates communication of the service request to a communication service provider of the customer to change communication service; client server that communicates with client to verify and receive order to change communication service and host server that generates a service request based on order and communicates service request to communication service providers (CSP)s to change communication service; client receiving order when a customer desired to change communication service, wherein the change in communication service contemplates changing or adding a service provider, changing or adding service offered by an existing service provider, or any other modification to services that offer the services; client that performs initial verifications on

order; client that communicates order to client server; completing the various verifications at client, client server, and third party verifier, the order is complete and ready for submission into the provisioning thread; host sever then retrieves complete order from the client server and determined CSP associated with complete order and formats service request for communication to CSP; CSP receives service request and routes service request to switch servicing customer, wherein the switch then updates its database to change account or service information of customer that reflects the desired change in communication service; and switch is a central office that updates the pre-subscribed interexchange carrier for customer stored in database are considered "configured to submit a service inquiry specifying a search criteria with respect to an order for a telecommunication offering; receive the procurement and service inquiries; generate procurement data pertaining to the selected telecommunication offering and service data pertaining to the search criteria; and transmit the procurement and service data".

The Examiner then turns to Sridhar to teach or suggest "a back office browser loaded on a back office client computer," and "a server program loaded on a server computer". Sridhar teaches communication between a client application and a server application over data network such as Internet. An example of such communication is between a client application which is a web browser and a server application which is a web server. (Col. 8, lines 19-24) Furthermore, Sridhar teaches communication on the first segment between client computer and gateway computer uses transmission control protocol (TCP) as the transport protocol. At the application layer, on the first segment,

client application communicates with proxy application using a proxy protocol that incorporates application protocols used for the end-to-end application layer communication between the client application and the server application. On the second segment, proxy application communicates with server application using the appropriate application layer protocol for which the server application is configured. Two specific application protocols that are used to communicate between client application and server applications are HTTP for accessing Web pages and data embedded in Web pages and FTP for accessing remotely stored files. (Col. 9, lines 44-58) The motivation to combine is to "enhanced communication between client and server computer coupled through the Internet" found in Sridhar, col. 1, lines 13-15.

Such communication between a client application and a server application over data network such as Internet; communication between a client application which is a web browser and a server application which is a web server; application layer, wherein client application communicates with proxy application using a proxy protocol that incorporates application protocols used for the end-to-end application layer communication between the client application and the server application; proxy application which communicates with server application using the appropriate application layer protocol for which the server application is configured; two specific application protocols that are used to communicate between client application and server applications are HTTP for accessing Web pages and data embedded in Web pages and FTP for accessing remotely stored files are considered "a back office

browser loaded on a back office client computer," and "a server program loaded on a server computer".

Examiner further notes with respect to KSR rational (f), that the marketplace reflects the reality that applying modern electronic network to older electronic commerce system is commonplace. Therefore, it would have been obvious to one of ordinary skill in the art of electronic commerce to update the older electronic commerce system such as shown in Leonard and Bednarek with modern electronic network that are commonly available and understood in the art as shown in Sridhar, in order to gain the commonly understood benefits of such adaptation, such as the ability to be instantaneously more responsive to customers thus increasing communication efficiencies. The combination is thus the adaptation of an old idea or invention, using newer technology that is commonly available and understood in the art. Leapfrog, 485 F.3d at 1163.

Moreover, the prior reference is considered analogous because it is "reasonably pertinent" to the problem with which the inventor is involved. In turn, a reference is reasonably pertinent if it logically would have commended itself to an inventor's attention in considering his problem. *Innovation Toys v. MGA Entertainment and Wal-Mart* (Fed. Cir. 2011)

C. Claims 40 and 41 are not rendered obvious by Leonard and Bansal because Bansal does not cure the deficiencies of Leonard in failing to disclose or suggest the combination of a pre-sale inquiry and an option to access a consultant.

Appellants remark that "Leonard lacks any teaching or suggestion of the "new" customer (i.e., a "pre- sale inquiry" by "a customer who is not yet a subscriber") or the combination of such a pre- sale inquiry with an option of communicating with a consultant". (Argument section, page 21, first paragraph)

Examiner does not agree. Leonard discloses a system for processing an order to change communication service (abstract). Leonard discloses the receiving of an order when a customer desires to change communication service. A change in communication service contemplates changing a service provider. (Col. 3, lines 57-60) Examiner notes that each service provider has its own calling plans and services, so when a customer decides to change service provider they are also changing their communication services and calling plans. When he or she changes communication service such as changing a service provider, that customer is an interested new subscriber or prospective subscriber. For example, a customer who subscribes to AT&T (service provider), wherein AT&T has its own services or calling plans, wants to change to a new service provider such as Verizon with its own set of services and plans, this person is processing an order to change to a different service provider which makes this person a prospective subscriber who is interested or inquiring about the Verizon plans and services. Furthermore, Leonard discloses customers can communicate and/or receive voice, video, and/or data signals from communication devices using twisted pair wire, coaxial cable, fiber optic cable, wireless links, or any other wireline or wireless link (generally referred to as links). Accordingly, communication devices may be landline or cellular telephones, computers, television

converter boxes, Internet appliances, personal digital assistants (PDAs), or any other device for communicating and/or receiving voice, video, and/or data signals. (Col. 3, lines 37-56) Clients 10 couple to client server 90 using links 20, network 30, and link 40. Network 30 could be the Internet, a wide area network (WAN), a private or public switched or dedicated network, or any other type of communication network for transferring data. (Col. 3, lines 9-13) Moreover, Examiner notes that Leonard may allow a third party to access the order made by the customer (col. 4, lines 11-13). The agent of the third party performs verification by reviewing part of the order by contacting customer and verbally verifying the customer's desire to change communication service. Third party verification is one manner which service providers and regulators reduce the risk of "slamming" or changing communication service providers without the consent of customers. (Col. 4, lines 11-21)

The Examiner then turns to Bansal to teach the instant messaging and white-boarding.

Such system for processing an order to change communication service, wherein the change includes changing a service provider; customers that can communicate and/or receive voice, video, and/or data signals from communication devices using twisted pair wire, coaxial cable, fiber optic cable, wireless links, or any other wireline or wireless link; third party that accesses the order made by the customer; agent of the third party that performs verification by reviewing part of the order by contacting customer and verbally verifying the customer's desire to change communication service, wherein third party verification is one manner which service providers and regulators

reduce the risk of "slamming" or changing communication service providers without the consent of customers are considered ""new" customer (i.e., a "pre- sale inquiry" by "a customer who is not yet a subscriber") or the combination of such a pre- sale inquiry with an option of communicating with a consultant".

Examiner further notes with respect to KSR rational (f), that the marketplace reflects the reality that applying modern electronic communication to older electronic commerce system is commonplace. Therefore, it would have been obvious to one of ordinary skill in the art of electronic commerce to update the older electronic commerce system such as shown in Leonard with modern electronic communication component that are commonly available and understood in the art as shown in Bansal, in order to gain the commonly understood benefits of such adaptation, such as the ability to be more interactive and responsive to customers in an instantaneous and reliable way thus increasing efficiency. The combination is thus the adaptation of an old idea or invention, using newer technology that is commonly available and understood in the art. Leapfrog, 485 F.3d at 1163.

Moreover, the prior reference is considered analogous because it is "reasonably pertinent" to the problem with which the inventor is involved. In turn, a reference is reasonably pertinent if it logically would have commended itself to an inventor's attention in considering his problem. *Innovation Toys v. MGA Entertainment and Wal-Mart* (Fed. Cir. 2011)

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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